

**CITY OF HALLANDALE BEACH/CRA ECONOMIC DEVELOPMENT  
PERFORMANCE AGREEMENT**

This Performance Agreement (the "Agreement") is entered into this \_\_\_\_ day of May, 2011 by Chaya Aydel Seminary, Inc. (hereinafter referred to as the "Business"), and the City of Hallandale Beach/Community Redevelopment Agency "CRA" (hereinafter referred to as the "CRA"), who hereby agree as follows:

**WITNESSETH:**

**WHEREAS,** On April 4, 2011, the CRA received a Business Incentive/Enticement Loan Program application, Letter of Intent and Business Proposal from the Business, an existing business, seeking financial assistance through the Business Incentive/Enticement Loan program; and

**WHEREAS,** On May 18, 2011, the City Commission approved a Business Incentive/Enticement Loan ("Loan") in the amount not to exceed \$200,000, which 15% (\$30,000) is forgivable subject to the terms of this agreement. The remaining balance of \$170,000 is repayable at 4% Interest for the Business; and

**WHEREAS,** the loan shall come from the Community Redevelopment Agency (CRA) Tax Increment Financing (TIF) account;

**NOW, THEREFORE,** in consideration of the mutual promises and other valuable considerations as shall be set out herein, the parties hereto do mutually agree to the following terms and conditions:

1. **Support:** The CRA hereby agrees to assist the Business with a loan not to exceed the amount of \$200,000 which 15% (\$25,000) may be forgiven provided the terms of the performance agreement are met. The remaining balance of \$170,000 is repayable at 4% interest over a ten (10) year period. The parties acknowledge that the amount loaned will be repayable in full to include the applicable interest, as stipulated in paragraphs (4), (9) and (10).
2. **Job Creation and Retention:** The Business hereby agrees to create a minimum of (20) new full time equivalent jobs (defined below) within 24 months from the date of contract execution with the CRA (preference will be given to City of Hallandale beach residents). Furthermore, the Business agrees to retain its existing workforce. The Business hereby acknowledges that the funding by the CRA is predicated upon this covenant by the Business, that failure to achieve this objective will constitute a material default under the terms of this Agreement, and that any such failure shall require the Business to repay all or a portion of the support provided by the CRA pursuant to the provisions of this Performance Agreement. [For purposes of this Agreement, a "Job" shall mean a full-time job (consisting of at least 35 hours per week of employment and eligibility for all benefits generally available for full-time employees of the Business) with the Business, at a wage at least equal to minimum wage and located in the City].
3. **Verification of Jobs:** The CRA shall forgive 15% of the loan amount, subject to the business creating and retaining the required amount of full time equivalent jobs, as outlined in paragraph 2. The Business's baseline job numbers will be

verified every three (3) months by the City, through documented payroll documents and records. Once the specified number of minimum jobs, which is twenty (20), has been obtained within 24 months from the date of contract execution, the Business shall notify the CRA so that the department can verify satisfaction of the conditions. The Business job numbers shall be verified within twenty four months following the creation of the minimum number of jobs required. The Business shall provide to the CRA, or their respective designees, full and complete access to all records of the Business that would be reasonably necessary to verify the number and types of jobs created, and the wages paid to employees. Failure to provide such access upon reasonable request shall constitute a default under the terms of this Agreement.

4. **Promissory Note:** The Business agrees to sign and execute a Promissory Note [Schedule "A"] hereinafter referred to as the "Note", acknowledging the value received. The Business agrees to make quarterly payments on the amount loaned at 4% interest, amortized over 10 years.
5. **Initial Installment:** The CRA hereby agrees that within thirty (30) days of the execution of this Agreement following a site visit to 1295 E. Hallandale Beach Blvd, to ensure the business is operating within the CRA boundaries, the CRA shall make available funding to the Business in the amount not to exceed Two Hundred Thousand Dollars (\$200,000.00) renovations.
6. **Funding Utilization:** The Business agrees to utilize funding for college library, office, class furnishing, supplies, equipment and licenses/ fees.
7. **Profitability:** Upon the Business obtaining profitable growth trends for four consecutive quarters, the CRA may stop loan disbursements.
8. **Loan Repayment:** The Business agrees to make quarterly payments in the amount, set forth in the "Note" and attachment Schedule "B", which is the amortized payment schedule. The Business may choose to repay the full amount at any time without penalty.
9. **Default:** If the Business fails to create the required number of jobs following the 24 month of the date of contract execution, or if the Business has created such jobs following the 24 month of contract execution, but has not maintained the required number of jobs for five (5) years, the Business shall repay to the CRA, an amount equal to the actual amount loaned which is Two Hundred Thousand Dollars (\$200,000) at an accelerated 7 percent interest. If a requirement exists to repay any sums hereunder, the CRA shall notify the Business in writing of the amount to be repaid, and shall direct them to pay such amount directly to the CRA. All such amounts due hereunder shall be due upon demand by the CRA. If not paid within 30 days following demand hereunder, the unpaid amount due hereunder or any instrument securing this obligation, shall bear interest at the accelerated rate of 7 percent after demand until paid. Upon default in such payment, the CRA may pursue all legal remedies to enforce their rights and remedies, and the Business hereby agrees to pay the reasonable attorney's fees for the CRA.

Should the business default on the terms of this agreement, the business must remit payment to the CRA, as noted above and the CRA shall have the right to seize all equipment purchased.

10. **Records:** The Business agrees to maintain full, accurate and verifiable records, supporting documents and all other pertinent data for this venture to enable the verification of the requirements contained in this Agreement. All such financial records, supporting documents and other pertinent records related to the Business shall be maintained for a period of at least 10 years from the date of contract execution with the CRA. In the event any such records are audited, all such records shall be retained beyond the 10-year period until any and all audit findings have been resolved. The Business agrees to make available to the CRA, or their designated representatives, all of its records which relate to the Business and the creation of jobs and agree to allow the CRA or their representatives to audit, examine and copy any and all data, documents, proceedings, records and notes of activity related in any way to the Business or such job creation. Access to these records shall be allowed upon request at any time during normal business hours and as often as the CRA or said representatives may deem necessary.
11. **Vendor Selection:** The Business agrees to hire and work with local vendors for the procurement of products and services, to the greatest extent possible.
12. **Performance Review:** The Business shall submit the CRA with a bi-annual performance review, to include a profit loss statement completed by a certified accountant.
13. **Representations and Warranties:** The Business hereby represents and warrants that:
  - (a) It is duly incorporated under the laws of the State of Florida.
  - (b) The execution and delivery of this Agreement has been duly authorized by all necessary action, and are not in contravention of law nor in contravention of any certificate of authority, bylaws, or other applicable organizational documents of such party, nor the provisions of any indenture, agreement, or undertaking to which it is a party or by which it is bound.
  - (c) There is no action, suit, proceeding, or investigation at law or in equity for any court, public board, or body pending, or to such party's knowledge, threatened against or affecting it, that could or might adversely affect the Business, the creation of the Jobs, or any of the transactions contemplated by this Agreement, or the validity or enforceability of this Agreement or such party's ability to discharge its obligations under this Agreement. If it is subsequently found that an act, suit, proceeding or investigation did or could threaten the development of the Business or the creation of such jobs, such party

shall be liable to the CRA for repayment of the entire amount described in Paragraph 10 above.

- (d) Such party shall at all times preserve its legal existence, except that it may merge or consolidate with or into or sell all or substantially all of its assets to any entity that expressly undertakes, assumes for itself, and agrees in writing to be bound by all of the obligations and undertakings of such party contained in this Agreement. If such party so merges, consolidates, or sells its assets without signing the aforementioned agreement, such party agrees to repay to the CRA the full amount of sums advanced under this Agreement, to include the accelerated interest rate of 7 percent.
- (e) No consent or approval is necessary from any governmental authority as a condition to the execution and delivery of this Agreement by such party or the performance of any of its obligations hereunder, or all such requisite governmental consents or approvals have been obtained. Such party shall provide the CRA with evidence of the existence of any such necessary consents or approvals at the time of the execution of this Agreement.
- (f) The Business is solvent.

**14. Special Provisions and Conditions:**

- (a) Nondiscrimination. The Business agrees not to discriminate on the basis of race, color, national origin, sex, religion, age, marital status, political affiliation, disability, or sexual orientation in the performance of this agreement, the solicitation for or purchase of goods or services relating to this agreement, or the subcontracting of work in the performance of this agreement. Failure to comply with this requirement is a material breach of the agreement, which may result in the termination of this agreement or such other remedy as the CRA deems appropriate.
- (b) Compliance with Laws. The Business shall at all times comply with all laws, ordinances, and regulations of the State, Federal and Local Governments which may in any manner affect the performance of the Agreement.
- (c) Non-Assignability. The Business shall not assign any interest in the Agreement, nor should they transfer any interest in the same, without the written consent of the CRA; provided however, that claims for money due to the Business from the CRA due under this Agreement may be assigned to any commercial bank or other financial institution without such approval.

- (d) Notice. All notices required or permitted hereunder and all communications in respect hereof shall be in writing and shall be deemed given when personally delivered or when deposited in the United States Mails, certified, return receipt requested, postage prepaid, and addressed as follows:
- (e) Execution. This Agreement may be executed in one or more counterparts, each of which, when executed, shall be deemed an original, and all such counterparts, together, shall constitute one and the same Agreement which shall be sufficiently evidenced by one of such original counterparts.
- (f) Construction. This Agreement shall be construed and governed by the laws of the State of Florida.

**15. JURISDICTION, VENUE, WAIVER OF JURY TRIAL:** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. All parties agree and accept that jurisdiction of any controversies or legal problems arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder, shall be exclusively in the state courts of the Seventeenth Judicial Circuit in Broward County, Florida, and venue for litigation arising out of this Agreement shall be exclusively in such state courts, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. BY ENTERING INTO THIS AGREEMENT, BUSINESS AND CRA HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.

**16. INDEMNIFICATION:** BUSINESS shall at all times hereafter indemnify, hold harmless and, at the CRA Attorney's option, defend or pay for an attorney selected by the CRA Attorney to defend CITY/CRA, its officers, agents, servants, and employees from and against any and all causes of action, demands, claims, losses, liabilities and expenditures of any kind, including attorney fees, court costs, and expenses, caused or alleged to be caused by intentional or negligent act of, or omission of, CRA or BUSINESS, their employees, agents, servants, or officers, or accruing, resulting from, or related to the subject matter of this Agreement including, without limitation, any and all claims, losses, liabilities, expenditures, demands or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. In the event any lawsuit or other proceeding is brought against CRA/CITY by reason of any such claim, cause of action or demand, BUSINESS shall, upon written notice from CRA, resist and defend such lawsuit or proceeding by counsel satisfactory to CRA or, at CRA'S option, pay for an attorney selected by CRA Attorney to defend CRA/CITY. The provisions and obligations of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the Contract Administrator and the CRA Attorney, any sums due BUSINESS under this Agreement may be retained by CRA until all of CRA'S claims for indemnification pursuant to this Agreement have been settled or otherwise resolved; and any amount withheld shall not be subject to payment of interest by CRA.

17. **AUDIT RIGHT AND RETENTION OF RECORDS:** CRA shall have the right to audit the books, records, and accounts of BUSINESS and its SUBBUSINESSES that are related to this Project. BUSINESS and its SUBBUSINESSES shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Project. All books, records, and accounts of BUSINESS and its SUBBUSINESSES shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, BUSINESS or its SUBBUSINESSES, as applicable, shall make same available at no cost to CITY in written form.

BUSINESS and its SUBBUSINESSES shall preserve and make available, at reasonable times for examination and audit by CRA, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act, Chapter 119, Florida Statutes, as may be amended from time to time, if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by CRA to be applicable to BUSINESS's and its SUBBUSINESSES' records, BUSINESS and its SUBBUSINESSES shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by BUSINESS or its SUBBUSINESSES. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for CRA disallowance and recovery of any payment upon such entry.

BUSINESS shall, by written contract, require its SUBBUSINESSES to agree to the requirements and obligations of this Section.

18. **INDEPENDENT BUSINESS:** BUSINESS is an independent BUSINESS under this Agreement. Services provided by BUSINESS pursuant to this Agreement shall be subject to the supervision of BUSINESS. In providing such services, neither BUSINESS nor its agents shall act as officers, employees, or agents of CRA. No partnership, joint venture, or other joint relationship is created hereby. CRA does not extend to BUSINESS or BUSINESS's agents any authority of any kind to bind CRA in any respect whatsoever.
19. **THIRD PARTY BENEFICIARIES:** Neither BUSINESS nor CRA intends to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.
20. **MATERIALITY AND WAIVER OF BREACH:** CRA and BUSINESS agree that each requirement, duty, and obligation set forth herein was bargained for at arms-length and is agreed to by the parties in exchange for quid pro quo, that each is substantial and important to the formation of this Agreement and that each is, therefore, a material term hereof.

21. CRA's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.
22. **SEVERANCE:** In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless CRA or BUSINESS elects to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.
23. **JOINT PREPARATION:** Each party and its counsel have participated fully in the review and revision of this Agreement and acknowledge that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.
24. **AMENDMENTS:** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the CRA and BUSINESS or others delegated authority to or otherwise authorized to execute same on their behalf.
25. **PRIOR AGREEMENTS:** This document represents the final and complete understanding of the parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. The parties agree that there is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.
26. **REPRESENTATION OF AUTHORITY:** Each individual executing this Agreement on behalf of a party hereto hereby represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such party and does so with full legal authority.
27. **MULTIPLE ORIGINALS:** Multiple copies of this Agreement may be executed by all parties, each of which, bearing original signatures, shall have the force and effect of an original document.

**IN WITNESS WHEREOF,** the parties hereto have made and executed this Agreement on the respective dates under each signature: CITY OF HALLANDALE BEACH through its authorization to execute same by Community Redevelopment Agency

(CRA) Board of Directors, signing and through City Manager/CRA Director, duly authorized to execute same, and

**CITY**

ATTEST:

CITY OF HALLANDALE BEACH

\_\_\_\_\_  
CITY CLERK

By \_\_\_\_\_  
Mark Antonio, City Manager

Approved as to legal sufficiency and form by

CITY ATTORNEY

\_\_\_\_\_  
David Jove, CRA ATTORNEY

WITNESSES:

\_\_\_\_\_  
(PRINT NAME)

\_\_\_\_\_  
CEO of America's Quality Care Services Inc.

**NOTARY SEAL**